IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4687 of 2007()

CRIME NO.84/07 OF CHAKKARAKKAL POLICE STATION

.....

PETITIONER: ACCUSED NO.1:

ABDULLA, AGED 40 YEARS,
S/O. MUHAMMAD HAJI, RAIHANA BAITH, RAHMATH NAGAR,
P.O. MOVVAL, PALLIKKARA, KASARGOD.

BY ADV. SRI.M.T.SURESHKUMAR
SRI.V.V.RAJA

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4687 OF 2007

Dated this the 14th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is allegedly the husband of the de facto complainant. A crime has been registered, inter alia, under Sec.498A of the IPC. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The spouses had allegedly fallen in love and had later got married. The de facto complainant alleges that the petitioner has been guilty of matrimonial cruelty of the culpable variety. It is alleged that the petitioner is having illicit relationship with another woman. It is alleged that he is guilty of mental and physical cruelty. A claim for maintenance has been staked by the de facto complainant on behalf of herself and her two children.

2. According to the petitioner, the allegations are totally

false. However, he takes up a contention that he has already divorced the de facto complainant. In the court a copy of the notice is shown which only indicates that two Talaks have been pronounced.

3. The learned Public Prosecutor opposes the application. In the facts and circumstances of this case to which I have made a brief reference above, I find absolutely no reason to justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. It is for the petitioner to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. No directions under Sec.438 of the Cr.P.C. appear to be necessary.

4. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

Nan

//true copy// P.S. to Judge